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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 RANDY BURDICK,

8 Plaintiff,

9 v.

10 COMMISSIONER OF THE SOCIAL
11 SECURITY ADMINISTRATION,

12 Defendant.

NO: 1:17-CV-3027-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 BEFORE THE COURT are the parties' cross motions for summary
14 judgment (ECF Nos. 12; 14). The Court has reviewed the administrative record
15 and the parties' completed briefing and is fully informed. For the reasons
16 discussed below, the Court GRANTS Defendant's Motion (ECF No. 14) and
17 DENIES Plaintiff's Motion (ECF No. 12).

18 JURISDICTION

19 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);
20 1383(c)(3).

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT ~ 1

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation omitted). The

1 party appealing the ALJ's decision generally bears the burden of establishing that
2 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

3 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

4 A claimant must satisfy two conditions to be considered "disabled" within
5 the meaning of the Social Security Act. First, the claimant must be "unable to
6 engage in any substantial gainful activity by reason of any medically determinable
7 physical or mental impairment which can be expected to result in death or which
8 has lasted or can be expected to last for a continuous period of not less than twelve
9 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
10 "of such severity that he is not only unable to do his previous work[,] but cannot,
11 considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy." 42 U.S.C. §
13 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
16 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
17 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
18 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
20 404.1520(b); 416.920(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
4 claimant suffers from "any impairment or combination of impairments which
5 significantly limits [his or her] physical or mental ability to do basic work
6 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
7 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
8 however, the Commissioner must find that the claimant is not disabled. *Id.*

9 At step three, the Commissioner compares the claimant's impairment to
10 several impairments recognized by the Commissioner to be so severe as to
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
12 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe as or more
13 severe than one of the enumerated impairments, the Commissioner must find the
14 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

15 If the severity of the claimant's impairment does meet or exceed the severity
16 of the enumerated impairments, the Commissioner must pause to assess the
17 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
18 defined generally as the claimant's ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
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1 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
2 analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
6 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
7 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
8 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the
9 analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
13 the Commissioner must also consider vocational factors such as the claimant's age,
14 education and work experience. *Id.* If the claimant is capable of adjusting to other
15 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
16 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
17 work, the analysis concludes with a finding that the claimant is disabled and is
18 therefore entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the

1 analysis proceeds to step five, the burden shifts to the Commissioner to establish
2 that (1) the claimant is capable of performing other work; and (2) such work
3 “exists in significant numbers in the national economy.” 20 C.F.R. §§
4 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

5 ALJ’S FINDINGS

6 Plaintiff filed Title II and Title XVI applications for disability insurance
7 benefits and supplemental security income disability benefits on July 18, 2013. Tr.
8 15. Plaintiff alleged disability beginning July 1, 2009. Tr. 15. Both applications
9 were denied initially and upon reconsideration, Tr. 80-99, 100-129. Plaintiff
10 requested a hearing. Tr. 8-10. A hearing was held before an Administrative Law
11 Judge on July 15, 2015. Tr. 32-79. The ALJ rendered a decision denying Plaintiff
12 benefits on September 24, 2015. Tr. 17-26.

13 The ALJ found that Plaintiff met the insured status requirements of Title II
14 of the Social Security Act through March 31, 2014. Tr. 15. At step one, the ALJ
15 found that Plaintiff had not engaged in substantial gainful activity since July 1,
16 2009, the alleged onset date. Tr. 17. At step two, the ALJ found that Plaintiff had
17 severe impairments of: degenerative disc disease; affective disorder; and anxiety
18 disorder. Tr. 17. At step three, the ALJ found that Plaintiff’s impairments did not
19 meet or medically equal a listed impairment. Tr. 18. The ALJ then determined
20 that Plaintiff had the residual functional capacity to:

1 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b)
2 including the following limitations. He can frequently stoop, crouch
3 and balance. He is capable of remembering and completing tasks
4 involving one or two steps. He is capable of performing simple,
5 repetitive work. He can have occasional contact with the public
6 averaging less than 10 minutes an occurrence.

7 TR. 20. At step four, the ALJ found that Plaintiff was not able to perform his past
8 relevant work as a painter. Tr. 20-21. At step five, after considering the Plaintiff's
9 age, education, work experience, and residual functional capacity, the ALJ
10 concluded that there are jobs that exist in significant numbers in the national
11 economy that the Plaintiff can perform. Tr. 25. The vocational expert testified that
12 Plaintiff would be able to perform occupations such as a housekeeper,
13 inspector/hand packager, and product assembler. Tr. 25. Thus, the ALJ concluded
14 that Plaintiff was not disabled and denied his claims on that basis. Tr. 26.

15 On December 14, 2016, the Appeals Council denied Plaintiff's request for
16 review, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
17 purposes of judicial review. 20 C.F.R. §§ 404.981, 416.1484, and 422.210.

18 ISSUES

19 Plaintiff raises two issues for review:

- 20 1) Whether the ALJ committed reversible error in rejecting
Plaintiff's testimony as not credible.

1 2) Whether the ALJ committed reversible error in weighing the
2 medical opinions.

3 ECF No. 12 at 5.

4 DISCUSSION

5 A. Plaintiff's Testimony

6 Plaintiff alleges that the ALJ did not give specific, clear and convincing
7 evidence that Plaintiff's testimony was not credible. ECF No. 12 at 6. The Court
8 disagrees. In social security proceedings, a claimant must prove the existence of
9 physical or mental impairment with "medical evidence consisting of signs,
10 symptoms, and laboratory findings." 20 C.F.R. §§ 416.908; 416.927. As long as
11 the impairment "could reasonably be expected to produce [the] symptoms," the
12 claimant may offer a subjective evaluation as to the severity of the impairment.
13 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). If an ALJ finds
14 the claimant's subjective assessment unreliable, "the ALJ must make a credibility
15 determination with findings sufficiently specific to permit [a reviewing] court to
16 conclude that the ALJ did not arbitrarily discredit claimant's testimony." *Thomas*
17 *v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). An ALJ may reject a claimant's
18 symptom testimony "only by providing specific, clear, and convincing reasons[.]"
19 *Brown-Hunter v. Colvin*, 806 F.3d 487 (9th Cir. 2015) (quotation and citation
20 omitted).

1 In the event that an ALJ finds the claimant's subjective assessment
2 unreliable, "the ALJ must make a credibility determination with findings
3 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
4 arbitrarily discredit claimant's testimony." *Thomas*, 278 F.3d at 958. In making
5 such a determination, the ALJ may consider, inter alia: (1) the claimant's
6 reputation for truthfulness; (2) inconsistencies in the claimant's testimony or
7 between his testimony and his conduct; (3) the claimant's daily living activities;
8 (4) the claimant's work record; and (5) testimony from physicians or third parties
9 concerning the nature, severity, and effect of the claimant's condition. *Id.*

10 The ALJ found Plaintiff not entirely credible because the objective medical
11 evidence did not support Plaintiff's complaints that he was limited to sedentary
12 work. Tr. 21-22. As the ALJ reasonably found, "[t]he medical evidence does not
13 support the claimant's allegations and instead shows the he retains the maximum
14 residual functional capacity (RCF) to perform a range of light tasks with limited
15 social interaction." Tr. 21. The ALJ specifically found:

16 On physical examination, the claimant's back is negative for
17 costovertebral angle (CVA) tenderness. (1F/4). The range of motion
18 (ROM) on musculoskeletal examination is normal, without any swelling or
19 deformities. No cyanosis, clubbing or edema is present. He does not
20 have any motor or sensory deficits. Back pain is treated conservatively
with muscle relaxers and anti-inflammatory. (3F/5). Imaging of the spine
shows only mild degenerative changes at L4-L5 with moderate
degenerative facet arthrosis. (11F/1). Similarly, only mild degenerative
facet arthrosis is seen at L5-S1. His gait is non-antalgic. (11F/5). He

1 walks heel-to-toe without difficulty. (11F/9). Romberg testing is
2 negative. Finger-to-nose testing is within normal limits. In April 2015,
3 the claimant's back pain was improving with treatment and medication.
(14F/5). Examination does not show any changes in his vision. (14F/9).

4 Tr. 21-22. Given the lack of objective medical records substantiating a severe
5 impairment, ALJ reasonably found that the medical records did not support
6 Plaintiff's testimony regarding the severity of his condition. Tr. 22. Notably, the
7 credibility assessment is only triggered when the objective medical evidence could
8 reasonably be expected to produce the claimant's pain or other symptoms, *Bunnell*,
9 947 F.2d at 345, so there is a question as to whether the credibility assessment was
10 even necessary given these findings.

11 The ALJ further found Plaintiff's daily activities were inconsistent with his
12 represented severity of pain and restrictions. Tr. 22. Plaintiff testified that he is
13 unable to work because of his anxiety, depression, and back pain. He further
14 testified that he is unable to stand for more than twenty five minutes, has memory
15 issues, is anxious around people, and is unable to sit for more than thirty minutes.
16 Tr. 21. However, Plaintiff testified that he is able to perform painting and building
17 projects, walk around the fence line of his five acre property, care for the horses,
18 drive a car, and walk with his grandchildren in the park. Tr. 22. Notably, Plaintiff
19 represented that he is not painting or building furniture because there are no jobs,
20 as opposed to an inability to perform the work itself. *Id.* The ALJ reasonably

1 found that this testimony contradicted Plaintiff's testimony that his functional
2 abilities are severely limited. Tr. 21.

3 The lack of objective medical evidence substantiating the severity of the
4 complaints and the inconsistencies between Plaintiff's claimed limitation and daily
5 activities are clear and convincing reasons for finding that the Plaintiff was not
6 credible. As noted above, given the lack of objective medical evidence, it is
7 unclear whether the credibility analysis was even necessary. *Bunnell*, 947 F.2d at
8 345. Accordingly, the Court finds that the ALJ did not err in finding Plaintiff not
9 entirely credible.

10 **B. Opinions of Treating and Examining Doctors**

11 Plaintiff contends that the ALJ erred in according (1) partial weight to the
12 consultative physician opinion of Philip G. Barnard, Ph.D. and (2) little weight to
13 the treating physician opinion of Caryn Jackson, M.D. ECF Nos. 15-21.

14 A treating physician's opinions are generally entitled to substantial weight in
15 social security proceedings. *Bray*, 554 F.3d at 1228. If a treating or examining
16 physician's opinion is uncontradicted, an ALJ may reject it only by offering "clear
17 and convincing reasons that are supported by substantial evidence." *Bayliss v.*
18 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). "If a treating or examining
19 doctor's opinion is contradicted by another doctor's opinion, an ALJ may only
20 reject it by providing specific and legitimate reasons that are supported by

1 substantial evidence.” *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir.
2 1995)). “However, the ALJ need not accept the opinion of any physician,
3 including a treating physician, if that opinion is brief, conclusory and inadequately
4 supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation
5 omitted).

6 Here, because the opinions are contradicted by other opinions assigning
7 Plaintiff a higher functional capacity, the ALJ need only provide specific and
8 legitimate reasons supported by substantial evidence.

9 In discounting the opinion of Dr. Barnard, the ALJ reasonably found that the
10 opined limitation of Plaintiff (1) is inconsistent with Plaintiff’s daily activities and
11 the longitudinal record in terms of objective medical evidence, (2) is based in part
12 on a GAF score that only pertains to Plaintiff’s functionality for a very finite
13 period of time, and (3) is otherwise deficient because Dr. Barnard “listed the least
14 instead of the most [that] the claimant could still do” and failed to review
15 Plaintiff’s medical records when assessing him. Tr. 23. These are specific and
16 legitimate reasons for discounting the opinion of Dr. Barnard.

17 As to the opinion of Caryn Jackson, M.D. the ALJ reasonably found the
18 opinion limiting Plaintiff to sedentary tasks (1) did not reconcile the opined
19 limitation with Plaintiff’s daily activities, (2) had reduced credibility because Dr.
20 Jackson listed symptoms instead of objective findings in assessing the RFC, (3)

1 was not supported by a concise, narrative analysis with citations to credible,
2 persuasive evidence of record, and (4) is speculative because Dr. Jackson state she
3 still needed labs, a CT scan for Plaintiff's abdomen and a referral to surgery. Tr.
4 23. The ALJ also reasonably found Dr. Jackson's separate medical source opinion
5 was deficient because the opinion (1) conflicted with her own medical records (2)
6 discussed functionality in terms of symptoms rather than what the objective
7 findings show, (3) relied on Plaintiff's subjective reports, which were not entirely
8 credible, instead of her own findings or other acceptable testing, and (4) was not
9 supported with medical records. Tr. 24.

10 The Court finds that the ALJ did not err in discounting the opinions based
11 on, among other things listed above, the inadequate medical and narrative support
12 for the opinions and the reliance on Plaintiff's subjective complaints, which the
13 ALJ found were not entirely credible. *Bray*, 554 F.3d at 1228 ("the ALJ need not
14 accept the opinion of any physician, including a treating physician, if that opinion
15 is brief, conclusory and inadequately supported by clinical findings"); *Ghanim v.*
16 *Colvin*, 763 F.3d 1154 1162 (9th Cir. 2014) (an ALJ may discount a medical
17 opinion if that opinion is based "'to a large extent' on an applicant's self-reports
18 and not on clinical evidence" and the ALJ properly finds the applicant to be not
19 credible (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008))).
20

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 12) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 14) is

4 **GRANTED.**

5 The District Court Executive is hereby directed to file this Order, enter
6 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

7 **DATED** December 14, 2017.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE

Chief United States District Judge